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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,564	12/18/2001	Jyrki Hoisko	413-010737-US(PAR)	2681
2512	7590	11/14/2005	EXAMINER	
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			NGUYEN, DAVID Q	
			ART UNIT	PAPER NUMBER
			2681	

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/023,564

Applicant(s)

HOISKO ET AL.

Examiner

David Q. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 24-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4,6,10,17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yonemura (JP 2000-172589) in view of Nozaki (JP410257131A).

Regarding claim 1, Yonemura discloses a method for expressing an affective state of a caller and/or a called party to a conversation partner in communication by telephone, where the caller and called party send each other messages wherein during the communication (see abstract), the caller or called party receiving the message view emotion image representing the affective state of the caller or called party sending the message (see abstract). Yonemura does not mention the message is musical message representing the affective state of the sender of the caller or called party sending the message. However, Nozaki discloses is musical message representing the affective state of the sender of the caller or called party sending the message (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time

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the invention was made to provide the above teaching of Nozaki to the method of Yonemura in order to express the caller's emotion.

Regarding claim 2, the method of Yonemura (JP 2000-172589) in view of Nozaki (JP410257131A) also discloses wherein the message of caller and called party are speech messages (see abstract of Nozaki).

Regarding claim 3, the method of Yonemura in view of Nozaki (JP410257131A) also discloses wherein the communication takes place in a system comprising equipment of an operator switching calls and in which system at least one phone is a cellular phone (see abstract and fig. 1 of Nozaki).

Regarding claims 4 and 6, the method of Yonemura in view of Nozaki (JP410257131A) also discloses wherein the phone of the caller/called party is a cellular phone and the musical composition is attached to the message sent by the caller in the caller/called's cellular phone of the caller/called party (see abstract and fig. 1 of Nozaki).

Regarding claim 10, the method of Yonemura in view of Nozaki also discloses the musical composition is attached to the message sent by the caller in the equipment of the operator switching the call (see abstract and fig. 1 of Nozaki).

Regarding claim 17, Yonemura in view of Nozaki discloses a system for expressing an affective state of a caller and/or called party to the conversation partner in communication by telephone, where the caller and called party send each other messages (see abstract and explanation in claim 1); wherein the system further comprises a directory storing musical compositions representing various affective states and a menu for selecting musical compositions in the directory (see abstract and explanation in claim 1).

Regarding claim 19, the system of Yonemura in view of Nozaki does not mention wherein the musical compositions are stored in the directory in the form of midi or mp3 files. Official notice taken that the musical compositions are stored in the directory in the form of midi or mp3 files is well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the above teaching of the system of Goldberg et al in view of Cardina et al so that the caller/called party can listen to music in many different formats.

3. Claims 5,7-9,11-16,18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yonemura (JP 2000-172589) in view of Nozaki (JP410257131A) and further in view of Goldberg et al. (US 6125175).

Regarding claim 5, the method of Yonemura in view of Nozaki does not mention wherein the musical composition is transferred together with the message on the same audio channel from the cellular phone of the caller to the phone of the called party. However, Goldberg et al disclose wherein the musical composition is transferred together with the message on the same audio channel from the cellular phone of the caller to the phone of the called party (see col. 1, line 64 to col. 2, line 2 and col. 2, lines 44-54 of Goldberg et al). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the above teaching of Goldberg et al. to the method of Yonemura in view of Nozaki in order to save channel of the system.

Regarding claims 7-9 and 11-13, the method of Yonemura in view of Nozaki does not disclose there is transferred from the caller to the called party an identifier on the basis of which the musical composition is selected; wherein the identifier specifies the name of the musical

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composition; wherein the identifier specifies the affective state of the caller. However, Goldberg et al disclose there is transferred from the caller to the called party an identifier on the basis of which the musical composition is selected; wherein the identifier specifies the name of the musical composition; wherein the identifier specifies the affective state of the caller (see col. 2, lines 45-54 of Goldberg et al). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the above teaching of Goldberg et al. to the method of Yonemura in view of Nozaki in order to express emotion of the sender during the conversation.

Regarding claims 14 and 18, the method of Yonemura in view of Nozaki does not mention sending a file containing a musical composition stored in electric form between the phone of caller and the called party. However, Goldberg et al discloses sending a file containing a musical composition stored in electric form between the phone of caller and the called party (see col. 1, line 64 to col. 2, line 2 and col. 2, lines 44-54 of Goldberg et al of Goldberg et al). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the above teaching of Goldberg et al. to the method of Yonemura in view of Nozaki in order to express emotion of the sender.

Regarding claim 15, the method of Yonemura in view of Nozaki and further in view of Goldberg et al. also discloses that wherein the musical composition is set to be played on the cellular phone of the called party (see abstract of Goldberg et al).

Regarding claim 16, the method of Yonemura in view of Nozaki and further in view of Goldberg et al. also discloses that wherein the musical composition is set to be played on a

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separate sound reproducing apparatus connected to the cellular phone of the called party (see abstract of Goldberg et al).

Regarding claim 22, the system of Yonemura in view of Nozaki does not mention wherein the directory is in the equipment of the operator. However, Goldberg et al discloses the directory is in the equipment of the operator (see col. 2, lines 44-54). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the above teaching of Goldberg et al. to the method of Yonemura in view of Nozaki in order to save memory of the caller/called party's phone.

4. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yonemura (JP 2000-172589) in view of Nozaki (JP410257131A) and further in view of Armanto et al (US 6094587).

Regarding claims 20-21, the system of Yonemura in view of Nozaki does not mention wherein the directory is in the cellular phone of the caller; wherein the directory is in the cellular phone of the called party. However, Armanto et al disclose the directory is in the cellular phone (see abstract fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the above teaching of Armanto et al to the system of Yonemura in view of Nozaki in order to user can change musical composition as desired.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yonemura (JP 2000-172589) in view of Nozaki (JP410257131A) and further in view of Makelaet al (US 6501967).

Regarding claim 23, the system of Yonemura in view of Nozaki does not mention wherein the menu is arranged to be at least in the cellular phone of the caller. However, Makelaet

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al disclose a menu is arranged to be at least in the cellular phone (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the above teaching of Makelaet al to the system of Yonemura in view of Nozaki in order to user can change musical composition as desired.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Q. Nguyen whose telephone number is 571-272-7844. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOSEPH H. FEILD can be reached on (571)272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*DN*

David Nguyen

  
JOSEPH FEILD  
SUPERVISORY PATENT EXAMINER